

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

JULY 30 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

EDUARDO AARON LEON,

Appellant.

2 CA-CR 2007-0113

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20051506

Honorable Michael J. Cruikshank, Judge

AFFIRMED

DiCampi, Elsberry & Hunley, LLC
By Anne Elsberry

Tucson
Attorneys for Appellant

ESPINOSA, Judge.

¶1 Appellant Eduardo Aaron Leon was charged with first-degree murder in connection with the April 2005 shooting death of David D. Twelve jurors found Leon not

guilty of first-degree murder but guilty of second-degree murder, a dangerous-nature offense. The trial court sentenced him to a presumptive, sixteen-year prison term and ordered him to pay restitution to the victim's family.

¶2 Appellate counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969).¹ Counsel states that, “[a]fter a conscientious review of the record and applicable law,” she was unable to find any meritorious issues to raise on appeal. She therefore asks us to search the record for fundamental error. Leon has not filed a supplemental brief.

¶3 Among the seven witnesses who testified at trial were a woman who had been present when the shooting occurred and Leon himself, who admitted having shot the victim with a rifle. The woman, Elaine Jold, who had had a seven-year relationship with Leon, testified he had asked David to work on his vehicle that was not running and had become angry when David was drinking instead of working on the vehicle. Leon had come inside to get his loaded rifle and had walked past Jold with it, saying he was going to scare the victim. Jold saw Leon point the rifle in the victim's direction and fire three shots. After the shooting, Leon asked Jold to put the rifle in its case, which she refused to do, and he threatened to kill her if she told anyone what had happened.

¹Counsel also cited, and may arguably have complied with, *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), which requires appellate counsel to “set[] forth a detailed factual and procedural history of the case with citations to the record, [so that] this court can satisfy itself that counsel has in fact thoroughly reviewed the record.” *Id.* ¶ 32.

¶4 Leon testified he had gone to get the rifle because he had wanted David to start working on his vehicle and had intended to scare him. Leon testified he had walked toward David and had shot twice between his legs without hitting him. Then, he testified, while he was trying to remove the ammunition clip from the rifle, he had accidentally shot the victim in the head.

¶5 Despite Leon's claim that he had not intended to fire the gun a third time or to shoot the victim in the head, there was substantial evidence supporting the conviction. Pursuant to our obligation under *Anders*, we have reviewed the trial court record in its entirety, searching for error and finding none. We therefore affirm Leon's conviction and presumptive sentence.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge